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International cooperation in combating transnational crime

Promoting the ratification of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Report of the Secretary-General**

Contents

		Paragraphs	Page
I.	Introduction	1-2	2
II.	Promotion of signature and ratification of the Convention and the Protocols thereto	3-8	2
III.	Interregional, regiona' and subregional meetings	9-13	4
IV.	Technical cooperation activities	14-15	5
V.	Conclusions and future action	16-22	6

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** The present report was not submitted within the time required by the 10-week rule because of the need to finalize plans for scheduled activities and decisions relating to future efforts to promote the ratification of the Convention and its Protocols.

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I. Introduction

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, and the Protocol against Smuggling of Migrants by Land, Air and Sea, supplementing the Convention (resolution 55/25, annexes I, II and III). By its resolution 55/255 of 31 May 2001, the Assembly adopted the supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (resolution 55/255, annex). In both resolutions, the Assembly urged all States and regional economic organizations to sign and ratify the instruments as soon as possible in order to ensure their speedy entry into force. In its resolution 55/25, the Assembly further encouraged Member States to begin making voluntary contributions to support the provision of technical assistance to developing countries and countries with economies in transition to assist them in their efforts to ratify and implement the instruments. In the same resolution, the Assembly requested the Secretary-General to provide the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat with the resources necessary to promote, in an effective manner, the expeditious entry into force of the Convention and the Protocols thereto.

2. In its resolution 56/120 of 19 December 2001, the General Assembly welcomed the signing of the Convention and the Protocols thereto, and expressed its appreciation for the offers of a number of Governments to host regional conferences at the ministerial level and for the financial contributions of a number of States for the purpose of holding pre-ratification seminars on facilitating the entry into force of the new instruments and their future implementation. The Assembly encouraged Member States to make adequate voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund for the provision to developing countries and countries with economies in transition of technical assistance for the implementation of the Convention and the Protocols thereto, including assistance for the preparatory measures needed for that implementation, taking into account article 30 of the Convention. In the same resolution, the Assembly requested the Secretary-General to provide the Centre with the resources necessary for the effective promotion of the entry into force of the Convention and the Protocols. The Assembly also requested the Secretary-General to report on the implementation of the resolution to the Commission on Crime Prevention and Criminal Justice at its eleventh session. The present report is submitted to the Commission in compliance with that request.

II. Promotion of signature and ratification of the Convention and the Protocols thereto

3. The Convention and the Protocols thereto have been recognized as a significant development in international criminal law and in joint international action against transnational organized crime. Their ratification and implementation by as many States as possible has been identified as a priority by the international community. Immediately following the conclusion of the High-level Political Signing Conference held in Palermo, Italy, from 12 to 15 December 2000, the Centre began developing and putting in place a strategy and a series of activities to promote the ratification of the Convention and the Protocols thereto. The unprecedented political commitment of States, expressed not only through the conclusion of the negotiations for the new instruments in record time, but also by the number of signatories to the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, which was the highest ever for instruments of that nature at the time of opening for signature, formed the basis for the development of the relevant activities. The ultimate objective of pre-ratification efforts was to support the speedy entry of the instruments into force, and to encourage ratification and full implementation by as many States as possible, in line with the request of the General Assembly in its resolutions 55/25 and 55/255. A key goal of the strategy and related activities of the Centre was the maintenance and further strengthening of the political momentum among States. In developing its strategy, the Centre devoted equal attention to the political and substantive components of the efforts that Governments would need to undertake in order to ratify the Convention and the Protocols.

4. Regarding the political component of the endeavour, efforts were geared towards working with Governments to encourage them to undertake the requisite legislative review and action and to proceed with the submission of the pertinent legislative proposals to the national parliaments as a matter of priority. In pursuing that approach, the Centre was cognizant of and attentive to the fact that the ultimate decision on ratification rests with national parliaments, which establish their own requirements, schedules and priorities. The Centre was, therefore, keen to ensure that its activities did not purport to influence, or in any way interfere with, the independent role and functions of national parliaments. In developing its strategy, and in particular in defining performance indicators for its activities, the Centre took into account the difficulty of estimating the time required for the completion of the last stage of the ratification process.

5. Regarding the substantive component of the effective promotion of the ratification of the new instruments, efforts concentrated on the identification of the most pressing needs of States for ratification of the Convention and the Protocols thereto. The activities focused on helping countries identify and meet their needs in new legislation or effect amendments to existing legislation, designed to bring them into basic compliance with the Convention and the Protocols, as appropriate. In designing its activities in that area, the Centre applied its experience gained from working with Governments in the past and from the views expressed and positions taken by delegations during the Convention negotiation process. The purpose was to assist States in bringing t. ?ir systems into compliance with mandatory provisions of the new instruments. That focus was determined on the premise that other obligations pertaining to the full implementation of the new instruments were to be effectively promoted by the Conference of the Parties, which would be established after the entry into force of the Convention.

6. In developing its strategy and activities, the Centre ensured that available resources were used in a targeted, efficient and effective manner, maximizing the impact of such resources and extending the reach of its activities as much as possible. That was accomplished by working in partnership with other United Nations entities, such as the United Nations International Drug Control Programme, and with other relevant international organizations that are active at the regional or subregional levels.

7. "Pre-ratification assistance" was understood as assistance in meeting the immediate and specific needs of States for undertaking the necessary steps leading to the ratification of the Convention and, as the case might be, one or more of the Protocols thereto. The main orientation of efforts was towards putting in place in each country the necessary measures to bring the legislative and other provisions or practices of that country into compliance with the instruments in order to permit their ratification by competent legislative bodies. That was deemed to be distinct from technical cooperation for the implementation of the new instruments once they have been ratified. It should be recalled that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime completed the negotiations for the Firearms Protocol in March 2001. Thus, the Protocol had not been adopted and opened for signature at the High-level Political Signing Conference held in Palermo. After the adoption by the General Assembly of the Firearms Protocol, the format and content of activities were adjusted and the Centre directed some of the activities towards promoting the signature and ratification of the Firearms Protocol, increasing its visibility and reducing the gap between that Protocol and the other three instruments.

8. At the time of writing of the present report, there were 140 signatories to the Convention; 102 signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; 98 signatories to the Protocol against the Smuggling of Migrants by Land, Sea and Air; and 26 signatories to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. There are seven parties to the Convention and five parties to each of the first two Protocols. The Centre has received information and informal indications suggesting that several more countries have completed the ratification process but have not deposited their instruments of ratification.

III. Interregional, regional and subregional meetings

9. Work towards promoting the ratification of the instruments began with a series of subregional seminars that comprehensively reviewed the content of the instruments and allowed participants an opportunity to identify and discuss specific requirements and steps for ratification.

10. The seminars had a dual purpose, in line with the two major components of the efforts towards ratification of the instruments, which were identified above. In terms of attendance, the seminars were geared towards attracting experts with substantive responsibility for ratification efforts in competent government ministries or offices and ministers or high-level officials with political responsibility for those efforts. The seminars were structured and conducted with a view to achieving key objectives on both the substantive and political levels. First, the seminars were intended to offer the opportunity to officials with substantive responsibilities to review their national legislation, as well as to engage in and benefit from dialogue on relevant matters with officials from other countries with which they shared similar or common legal systems and traditions. Secondly, the seminars were organized to function as a forum to identify specific needs and explore options for responding to those needs. The presence of ministers or other high-level political decision makers offered the opportunity for them to be apprised of the requirements for the completion of the ratification process and to be informed about the status of the efforts of other States in their immediate vicinity. Equally, their attendance served as an occasion for them to reiterate and renew their commitment to staying the course of strengthened international cooperation on which their countries had embarked with the negotiation of the instruments. It was expected that, as critical needs and requirements were identified, efforts at the national level would shift from general consideration of the instruments towards specific legislative and regulatory action, leading to the ratification of the instruments. At the same time, it was expected that a result of the seminars would be the identification of specific areas of assistance, thus permitting the Centre to shift its activities to working with individual Governments to assist them in effecting specific legislative and other changes that they would identify as essential to their efforts to ratify one or more of the instruments expeditiously.

11. The seminars were conducted on the basis of a series of presentations developed by the Centre, with the use of a checklist of elements for ratification of the instruments. The checklist consists of an inventory of legislative requirements for basic compliance with the instruments, which each country can review against its existing laws in order to identify discrepancies and specific subjects for further consideration and action.

12. In cooperation with the Centre, the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme prepared a questionnaire, addressed to policy makers and legislation drafters, seeking information about existing laws and possible requirements for ratification. More specifically, the questionnaire requested information from each country about the existing domestic criminal legislation dealing with organized crime. Also covered were laws regarding mutual legal assistance, extradition, other forms of international cooperation and other areas relevant to the new instruments. The questionnaire also sought to identify major issues or challenges each country is likely to encounter as it proceeds towards ratifying and implementing the various provisions. The questionnaire was tested at the interregional seminar on the ratification of the Convention and its Protocols, organized by the International Scientific and Professional Advisory Council at Courmayeur, Italy, from 13 to 16 September 2001. The Centre began distributing the questionnaire to the participants in seminars held after September 2001, in order to assist them in preparing for the seminars and for the purpose of collecting information on the status of legislation in States in connection with the ratification and implementation of the Convention and its Protocols. Also in cooperation with the Centre, the International Association of Prosecutors developed a more detailed questionnaire, addressed to practitioners, and distributed it to its membership at the general meeting of the International Association on 31 October 2001. Results from both questionnaires will be compiled for use in formulating future work and specific programmes for individual countries that request assistance.

13. In 2001, the Centre organized or participated in the following seminars and meetings on the ratification of the Convention and its Protocols:

(a) Ministers of Justice, Attorneys-General and other representatives of States members of the Southern African Development Community, including Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe, attended a Seminar held in Pretoria, from 26 to 28 March 2001, to review the instruments and consider measures needed to support them. Particular attention was directed at the provisions dealing with mutual legal assistance and extradition;

(b) Ministers of Justice and other representatives and experts from the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama attended a seminar held in Guatemala from 19 to 20 April 2001. Several other countries from the region sent observers. Participants discussed issues and reported progress towards ratification, and several indicated that they expected to be able to ratify some of the instruments by the end of 2001;

(c) Representatives of States members of the Association of South-East Asian Nations, including Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam, attended a high-level meeting of experts on the Convention and the Protocols thereto in Hanoi, from 8 to 10 August 2001. Existing legislation and ongoing efforts in the participating countries to ensure conformity with the instruments were considered;

(d) Representatives of States members of the Economic Cooperation Organization, including Afghanistan, Azerbaijan, the Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Pakistan, Turkey, Tajikistan and Uzbekistan, attended a subregional ministerial seminar in Tehran, from 3 to 4 October 2001. The seminar was organized in close cooperation with the Economic Cooperation Organization and hosted by the Government of the Islamic Republic of Iran. The meeting considered progress towards the ratification of the instruments in participating countries and relevant regional issues;

(e) In close cooperation with the Regional Office of the United Nations International Drug Control Programme in Barbados and with the invaluable involvement and generous assistance of the Commonwealth Secretariat, the Centre organized a ministerial consultation for the following States of the Caribbean: Antigua and Barbuda, Barbados, Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago. The meeting was held in Port-of-Spain from 30 November to 1 December 2001. It had been preceded by an initial presentation of the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol by a representative of the Centre at the meeting of Law Ministers of the Caribbean Community held in Guyana in January 2001 and by a signing ceremony for States members of the Caribbean Community, organized in New York on 26 September 2001. The ministerial consultation was divided into an expert segment and a ministerial segment. Using the checklist of the Centre, participants extensively analysed domestic legislation in their countries, discussed legislative and regulatory requirements for ratification and reviewed a model bill against organized crime, designed to bring domestic laws into line with the Convention, which had been prepared by the representative of Barbados;

(f) Ministers and other representatives of States members of the Economic Community of West African States, including Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea Bisseau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo, attended a subregional ministerial seminar in Ouagadougou, from 28 to 30 November 2001. An expert segment of the meeting examined the ongoing process of harmonizing national legislation with the Convention and expressed broad consensus in favour of early ratification. The ministerial segment of the meeting adopted a declaration recommending that States members of the Economic Community of West African States that had not signed the instruments do so, and urging those that had signed to ratify them.[1]

IV. Technical cooperation activities

14. The Centre undertook a number of activities at the request of Member States, focusing on specific issues relating to the ratification and implementation of the instruments in those States. They included pre-ratification activities undertaken in Croatia,[2] Monaco, Peru,[3] Romania, Saudi Arabia[4] and Slovakia.[5] Assistance in the form of documentation was also provided to Ukraine.

15. Other seminars and meetings were also conducted during 2001 to brief relevant organizations on the content of the new international legal instruments. The organizations briefed included the following:

(a) The Office of the United Nations High Commissioner for Refugees, the Office of the High Commissioner for Human Rights and the International Labour Organization (ILO) discussed ways and means of cooperating on matters relating to the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol at a meeting organized in Geneva in March 2001 by ILO;

(b) The preparatory committee for the United Nations Conference on Small Arms was briefed on the Firearms Protocol and on the implications of that instrument for its efforts against the proliferation of small arms and light weapons;

(c) The Mediterranean contact group of the Organization for Security and Cooperation in Europe (OSCE) was briefed on the Firearms Protocol and on the implications of that instrument for OSCE efforts to counter the proliferation of small arms and light weapons, and possible areas of cooperation between OSCE and the Centre were explored;

(d) The 106th Annual Conference of the Inter-Parliamentary Union, held in Ouagadougou from 9 to 16 September 2001, represented a unique opportunity for the Centre to outline to the legislative officials of many countries, in a single meeting, the legal and policy issues raised by the instruments and the legislative measures that would be needed to ratify and implement them. Following the Annual Conference, the secretariat of the Inter-Parliamentary Union offered to continue promoting the ratification of the new instruments by keeping the members of the organization informed of developments;

(e) A pre-ratification seminar was organized by the International Scientific and Professional Advisory Council at Courmayeur, Italy, from 13 to 16 September 2001. The seminar brought together representatives from approximately 30 States of all regions, including some of the States that had already ratified the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, offering them the opportunity to carry out a comparative analysis of their national legislation and review their respective efforts for ratification of the new instruments;

(f) The seventieth General Assembly of the International Criminal Police Organization, held in Budapest from 24 to 28 September 2001, was briefed on the Convention and the Protocols thereto.

V. Conclusions and future action

16. The series of seminars successfully launched in 2001 is scheduled to be concluded in 2002. Following subregional seminars, the Centre has planned regional seminars in Quito for the countries of the Latin America and Caribbean region, in Vilnius for the countries of Central and Eastern Europe, in Algiers for the countries of the African region and in Tokyo for the countries of the Asia and the Pacific region. Those seminars will build on the experience of the subregional meetings, completing the efforts of the Centre to cover and reach as many countries of the world as possible. The purpose of the seminars will be to review the progress achieved since the subregional seminars in the ratification efforts of Governments, further identify the needs of States, and refine the projects and materials developed to meet those needs.

17. On the basis of seminars, meetings and other activities conducted during 2001, some general needs have become apparent. Assistance appears to be needed with the formulation of the four offences established by the Convention, and, in particular, the offence of participation in an organized criminal group. That represents a new concept for many legal systems, and in some cases must be carefully drafted to ensure full compatibility with other established legal concepts, as well as the functionality and applicability of the relevant legislation. Another area in which assistance appears to be required is that of extradition. In some cases, the scope of the new instruments may require extensive revisions and amendments to extradition arrangements or legislation in some States, especially when the requirements of the new instruments are viewed in the context of jurisdictional considerations emanating from the obligation to prosecute offenders that those States do not extradite by reason of their nationality. Other areas commonly dealt with in national seminars, meetings or other activities include the provisions governing the confiscation, seizure and disposal of proceeds of crime or other property.

18. The Centre has received, and is at various stages of responding to, requests from several States,

including Belarus, Benin, Bolivia, Bosnia and Herzegovina, Chile, Guinea Bissau, Mauritius, Mongolia, Namibia, Thailand, The former Yugoslav Republic of Macedonia, Venezuela, Ukraine and Yugoslavia. Projects will be implemented in cooperation with relevant regional or other international organizations, including the Agence intergouvernementale de la Francophonie, the Commonwealth Secretariat and the Southern European Cooperation Initiative.

19. Future pre-ratification activities are expected to begin with the compilation by each State involved of a summary of relevant criminal law, including legislation and relevant case law, where applicable, and the identification of a focal point for each country. Using the questionnaire of the International Scientific and Professional Advisory Council, the list of ratification elements, the Convention and the Protocols themselves and other materials, a list of subject areas, issues and specific provisions that must be addressed in order to bring the laws of each country into conformity with the instruments will then be developed. Non-legislative requirements, such as the training of officials and the establishment or expansion of institutions will also be identified. Assistance will be provided in proceeding with the necessary changes, to the extent that such assistance is requested and that the necessary resources are available. Generally, it is expected that legislative measures would be taken first, to permit the subsequent training of officials in both the international instruments and the domestic legislation that has been created or amended to conform with them.

20. As noted previously, the Centre is in the process of collecting the replies of States to the two above-mentioned questionnaires. The Centre believes that the value of the information collected would go well beyond that of supporting and offering direction for its activities to promote ratification of the Convention and its Protocols. The information on legislative development and solutions found by countries in bringing their legal systems into compliance with the new instruments would serve as a basis for increasing knowledge on approaches taken by countries in shielding themselves against organized crime. Broader knowledge would also increase the possibilities for and the effectiveness of international cooperation, an objective that the new instrument had been devised to achieve. An analysis of the information on legislation enacted in various countries in line with the Convention and the Protocols thereto would be a useful basis for work for the Conference of the Parties to the Convention, when it is constituted. Therefore, the Centre intends to continue collecting information on legislation, and to compile and analyse such information for broad dissemination and use.

21. To support those activities, the Centre plans to establish pools of experts on which it could draw to offer assistance to requesting countries in supporting their efforts to ratify the Convention and the Protocols thereto and to incorporate the key provisions of those instruments into their national legislative and regulatory regimes. Each group will be composed of 20 to 25 experts (four or five from each region), with a view to increasing their number as the needs evolve. The pools of experts would be used to prepare specific legislative elements or model laws and develop related advice in non-legislative areas. One group would focus on issues raised by the Convention itself, while the other would focus on the Protocols, possibly with subgroups examining each Protocol or with a specific subgroup established to consider the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, which raises legal, forensic and administrative issues distinct from the other instruments. The pools of experts would also be used as a consultative body (a sort of sounding board) for the Centre in developing technical cooperation tools.

22. The extensive effort to assist as many States as possible in ratifying the Convention and the Protocols thereto would not have been possible without the generous support of several donors. The Centre intends to continue ensuring the efficient use of the resources entrusted to it and the maximization of their impact. The attainment of the common goals of the expeditious entry into force of the Convention and the Protocols and their subsequent full implementation will depend both on the continued commitment by all States to support the new instruments to the best of their individual and collective abilities and on the quality of services to be provided by the Centre.

Notes

[1] The declarations of the subregional seminars are available to the Commission as conference room papers.

[2] Seminar on fighting organized crime and corruption.

[3] Seminar on fighting organized crime and corruption.

[4] Joint legal training workshop on drugs and organized crime (organized by the United Nations International Drug Control Programme).

[5] Seminar on fighting organized crime and corruption.